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No. 47

In the Supreme Court of the United States

OCTOBER TERM, 1955

SALVATORE FALCONE AND JOSEPH FALCONE,
PETITIONERS

v.

HAROLD E. BARNES, OFFICER IN CHARGE OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 40–54) is reported at 219 F. 2d 137. The memorandum opinion of the District Court (R. 26–35) is reported at 116 F. Supp. 464.

JURISDICTION

The judgments of the Court of Appeals were entered on January 10, 1955 (R. 54, 55), and a petition for rehearing was denied on February 8, 1955 (R. 55–56). The petition for a writ of certiorari was filed on April 12, 1955, and was

granted on May 16, 1955 (R. 56; 349 U. S. 927). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under the subpoena power conferred by Section 235 (a) of the Immigration and Nationality Act of 1952, an immigration officer, in the course of an administrative investigation to determine whether good cause exists for the institution of denaturalization proceedings, may subpoena the naturalized citizen who is the subject of the inquiry.

STATUTE AND REGULATIONS INVOLVED

Pertinent portions of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 8 U. S. C. 1101 *et seq.*, and the regulations of the Immigration and Naturalization Service are set forth as an Appendix to the Government's brief in *United States* v. *Minker*, No. 35, this Term, at pp. 50–60.

STATEMENT

Petitioners seek reversal of the judgment of the Court of Appeals and the reinstatement of two orders of the District Court which denied the application of the Officer in Charge of the Syracuse office of the Immigration and Naturalization Service to secure compliance with administrative subpoenas. The subpoenas had been issued by the Service pursuant to Section 235

(a) of the Immigration and Nationality Act in connection with an investigation (under 8 C. F. R. 340.11) into whether good cause existed for the institution of judicial proceedings under Section 340 (a) of the Act to revoke petitioners' naturalization. The facts pertinent to the issues raised may be summarized as follows:

In April 1953, the Officer in Charge of the office of the Immigration and Naturalization Service in Syracuse, New York, addressed a letter to petitioner Joseph Falcone requesting that he appear in his office for an interview in connection with an official matter (R. 12, 26–27). About the same time petitioner Salvatore Falcone, who was in Miami, Florida, was asked to appear for an interview by officials of the Miami office of the Immigration and Naturalization Service (R. 22). Both voluntarily appeared for their respective interviews. Petitioner Joseph Falcone, however, refused to answer any questions asked him by the immigration officer. Petitioner Salvatore, on being asked to explain the reason for the use of the name "Projelto" by his parents when they entered this country in 1925, replied that he had no explanation, that his mother and father were dead, and that he had always used and was known by the name of Falcone (R. 27).

Following these interviews, on June 18, 1953, a subpoena was issued, signed by an acting officer in charge of the Syracuse office, requiring that

petitioner Joseph Falcone appear in the Syracuse office on June 23, 1953, and give testimony in a matter entitled "In re Joseph Falcone" pursuant to Section 235 (a) of the Immigration and Nationality Act (R. 5, 13). On June 30, 1953, a similar subpoena signed by the officer in charge of the Syracuse office was issued against petitioner Salvatore Falcone at an address in Utica, New York, requiring him to appear on July 3, 1953, in connection with a matter captioned "In re Salvatore Falcone", also pursuant to Section 235 (a) of the Immigration and Nationality Act. Both subpoenas required that each of the petitioners bring with him "evidence of your birth and of your original entry into the United States, and your naturalization certificate" (R. 13, 20).

Each petitioner appeared before an immigration officer in the Federal Building in Syracuse, New York, at the time designated in his subpoena, bringing with him his birth certificate and certificate of naturalization. Each refused, however, either to be sworn or to testify (R. 21–24, 27). Counsel for petitioners stated that their objection to compliance with the subpoena was that Section 235 (a) applies only where aliens are concerned and does not authorize the Service to subpoena citizens (R. 22–24).

Thereafter, on September 9, 1953, the United States Attorney applied for and was granted an order to show cause directed to each of the petitioners, returnable on or before September 21, 1953

(R. 1, 2). In an affidavit in support of the submitted order, the officer in charge of the Syracuse office stated that his office was required by regulation (8 C. F. R. 340.11) to cause an investigation to be made where it appeared that an order admitting a person to citizenship had been procured by concealment of a material fact or by willful misrepresentation; that investigations into the legality of the naturalization proceedings of both petitioners were then in progress; that a subpoena had been issued pursuant to Section 235 (a) of the Immigration and Nationality Act to each petitioner requiring his testimony in connection with this investigation; and that, while they had produced the naturalization documents called for, both had declined to testify under oath as required (R. 3–4). Counsel for petitioners thereupon filed a notice to set aside each of the subpoenas, with affidavits alleging, *inter alia*, that the Service had no authority under Section 235 (a) of the Immigration and Nationality Act to subpoena citizens, and that this section gives the Service jurisdiction only to question aliens (R. 7–11, 14–19).

After a hearing on September 21, 1953, the District Court denied the application of the Officer in Charge of the Immigration and Naturalization Service for an order of compliance as to each petitioner (R. 35–37).

On appeal, the judgment was reversed (R. 54). The Court of Appeals noted that Section 235 (a) of the Act broadened the investigative subpoena power (theretofore granted by Section 16 of the Immigration Act of 1917, 39 Stat. 885, 8 U. S. C., 1946 ed., 152) so as now to empower designated officers of the Service ("undisputedly including those who issued the subpoenas in these cases", R. 45) not only to use subpoenas in investigations "relating to the privilege of any person to enter, reenter, pass through, or reside in the United States" but also "concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." The court concluded (R. 46):

> * * * Surely investigations of an administrative character, conducted by the very officials who by training and experience have expert knowledge of the whole subject of immigration and naturalization, and designed not merely to procure evidence to support a denaturalization proceeding under Section 340 of the Act, but to ascertain the true facts and in many if not most cases, exonerate those under investigation, are "concerning * * * matter which is material and relevant to the enforcement" of the Act. * * *

SUMMARY OF ARGUMENT

This case involves the same question as, and is to be heard with, *United States* v. *Minker*, No. 35.

Incorporating by reference our brief in that case, we supplement it here with discussion of specific points raised by the petitioners.

I

In their effort to avoid the conclusion compelled by the plain language and history of Section 235 (a) of the Immigration and Nationality Act—that the subpoena power is available for administrative investigations to determine whether there is "good cause" for a denaturalization proceeding, since this is a "matter which is material and relevant to the enforcement of this Act"—petitioners argue (1) that such a construction would render meaningless the grant of investigative powers under Sections 236 (a), 242 (b), 287, 335 (b), and 336 (d), and (2) that the Attorney General's regulations reflect a belief that no such power exists. The cited statutory provisions and the pertinent regulations reveal that both contentions are clearly erroneous.

1. Four of the five sections of the Act upon which petitioners rely—236 (a), 242 (b), 287, and 336 (d)—make no provision for administrative subpoenas. Far from supporting the view that redundancy would result from construing the subpoena provision of Section 235 (a) in accordance with the broad language Congress deliberately added, these sections reinforce the propriety of such a construction.

Section 335 (b), dealing with preliminary examinations upon petitions for naturalization, does contain a provision of its own for subpoenas in connection with such examinations. This separate provision has existed in the nationality laws since 1926, alongside the subpoena provision in the immigration laws from which the broadened language of Section 235 (a) derives. The unique character of the preliminary examination, where the examiner functions as an officer of the court and takes testimony which is frequently accepted by the court in lieu of further appearance by the witnesses, makes this an appropriate subject for detailed treatment by itself. See *Bindczyck* v. *Finucane*, 342 U. S. 76, 81, fn. 5. These factors—the separate derivation and the special nature of preliminary examinations—divest of force the argument that 235 (a) and 335 (b) are redundant if the former is read as it was written. Like the statute, the regulations (see 8 C. F. R. 287.4 (a) and 335.11) treat preliminary examinations separately. There is no overlap which could possibly be significant here, and thus no reason to find in this arrangement a ground for denying the power to subpoena in denaturalization investigations.

2. The Attorney General's regulations deal comprehensively with the general subpoena power. 8 C. F. R. 287.4. Thus petitioners are mistaken in their belief (Pet. Br. 37) that the regulations are silent on this subject. The fact that the regulations are numbered under Section 287, dealing

generally with the powers of immigration officers rather than under Section 235 is, of course, insignificant, and petitioners, having overlooked the pertinent regulations altogether, make no contrary argument. Such an argument would be "frivolous" in any event. *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326, 338. As anybody would who reads the statute, Congress recognized that Sections 287 and 235 must be considered together to determine the sum of the powers of immigration officers. H. Rep. No. 1365, 82d Cong., 2d Sess., p. 55. The regulations merely combine the two in placing the subpoena power under 287, expressly citing Section 235 of the statute as authority.

II

Petitioners erroneously assert an inconsistency between administrative inquiry, implemented by the subpoena power, and the fact that the Act provides in Section 340 (a) a judicial procedure for revocation of naturalization unlawfully obtained. Investigation by the executive to determine whether there is good cause for a judicial proceeding is perfectly compatible with and necessary to the power and duty to bring appropriate actions in court. *E. g., United States* v. *Morton Salt Co.*, 338 U. S. 632, 642–643; *Oklahoma Press Pub. Co.* v. *Walling*, 327 U. S. 186, 201. And, as our *Minker* brief shows (pp. 21–28), this investigative function has long been performed by the Immigration Service with respect to the duty

to bring denaturalization proceedings where there is "good cause" therefor.

There is no merit in the broad contention that enforcement of the subpoenas in this case would violate petitioners' right of privacy. As they concede (Pet. Br. 35), pretrial examination would be available in a denaturalization proceeding under Section 340 (a). Cf. *United States* v. *Costello*, 222 F. 2d 656 (C. A. 2), pending on petition for certiorari, No. 155, this Term. And subpoenas under Section 235 (a) are enforceable only by judicial order. There is no constitutional difference between the two procedures insofar as the claimed "right of privacy" is concerned.

The decisive point in this case is that petitioners have no blanket freedom from legitimate government inquiry—a point established by the many cases, reviewed in our *Minker* brief (pp. 35–37, 40–43), enforcing the administrative subpoena power for investigations of facts which may lead to civil or criminal actions in court. This is not to deny that petitioners might claim privilege or raise other objections to specific inquiries. But no such question is here; petitioners have simply denied the power to subpoena them at all. *United States* v. *Murdock*, 284 U. S. 141, 148; *Brown* v. *United States*, 276 U. S. 134, 144.

Similarly, the suggestion that the subpoena power may be abused is no objection to enforcement in this case, where there has been no abuse. The administrative regulations carefully restrict

the occasions and the scope of inquiries into possible naturalization frauds. If the restrictions are exceeded, the courts are empowered to correct the errors as they arise. But the administrative power Congress conferred is not to be denied on the supposition that it may at some time be misused.

ARGUMENT

In our brief in *United States* v. *Minker*, No. 35, this Term, which presents the same problem and will be heard together with this case, we have dealt with the principal contentions urged by these petitioners. Accordingly, we incorporate by reference our brief in the *Minker* case, and undertake here to amplify our position in response to certain points discussed by petitioners.

I

PETITIONERS' ATTEMPT TO LIMIT THE PLAIN LANGUAGE OF SECTION 235 (a) IS SUPPORTED BY NEITHER THE TEXTUAL ANALYSIS THEY PROPOSE NOR THEIR ERRONEOUS ASSERTION THAT THE ADMINISTRATIVE REGULATIONS ARE SILENT ON THE SUBPOENA POWER

As shown in the Government's brief in *United States* v. *Minker* (pp. 11–29), the literal terms of Section 235 (a) of the Immigration and Nationality Act, empowering the Attorney General and any immigration officer to subpoena witnesses for testimony "concerning any matter which is material and relevant to the enforcement of this Act",

plainly provide for subpoenas to be used in the investigation of possible grounds for denaturalization. We demonstrated there (pp. 17 *et seq.*) that the legislative history, revealing the purposeful addition of the quoted language to expand the subpoena power as it had formerly existed, powerfully reinforced the conclusion which flowed directly from the language itself. And we undertook to show (pp. 30–49) that the Third Circuit had erred when, after agreeing with the foregoing broad proposition, it held that the "witnesses" for whom subpoenas under Section 235 (a) are authorized could only be others than the person whose naturalization was under investigation. We rely upon our discussion in the *Minker* brief, without more, to answer the contentions here (1) that the subpoena power reaches *citizens* only to the extent that persons claiming to be citizens may be seeking admission to the United States (Pet. Br. 24–28), or, alternatively, (2) that the petitioners' submission of evidence that they had been naturalized ended the power to interrogate them (Pet. Br. 29–32). In our view, these contentions read unfounded limitations into the statute as Congress wrote it and as its background shows it was intended to operate.

We turn to a fuller discussion of two further arguments. First, it is asserted that if the subpoena power in Section 235 (a) is applied generally according to its terms, and thus held avail-

able for denaturalization investigations—as the Second, Third, and Fifth Circuits have all agreed it should be[1]—it renders superfluous the grant of "investigatory powers in Sections 236 (a), 242 (b), 287, 335 (b), and 336 (d)" (Pet. Br. 36). Second, petitioners state that the Attorney General omitted from his regulations any description of the subpoena power he claims under Section 235 (a), thus reflecting an authoritative belief that no such power exists (Pet. Br. 37). The first argument is refuted by the very provisions petitioners cite; these show that, far from being redundant, the general grant of the subpoena power in Section 235 (a) is appropriate and necessary for the investigative and adjudicative functions defined elsewhere in the Act. The second argument is simply mistaken in fact; the regulations (8 C. F. R. 287.4) actually do spell out the subpoena power, explicitly relying upon Section 235 (a) as authority.

1. Four of the five sections petitioners cite for their view that the subpoena power under Section 235 (a) would be merely a duplication if defined in accordance with the general statutory terms contain no provisions at all, in themselves, for

[1] As pointed out above and in our *Minker* brief (pp. 9–10), the Third Circuit in that case, the Second Circuit in this, and the Fifth Circuit in *Lansky* v. *Saccoretti*, 220 F. 2d 906, pending on petition for certiorari, No. 100, this Term, all conclude that subpoenas are authorized by Section 235 (a) for denaturalization investigations.

administrative subpoenas. Examination of these sections—236 (a), 242 (b), 287, and 336 (d)—actually lends further support to our view that Section 235 (a) should have the application its language requires, since the first two present obvious occasions for the administrative use of subpoenas and neither these, the remaining two, nor any others supply this need except as it is met by the sufficient language of Section 235 (a). The remaining provision, Section 335 (b), does reenact the statutory power which formerly existed for the use of subpoenas in the particular circumstances of preliminary examinations upon petitions for naturalization. But the continuation of this special provision affords no basis for excising the deliberate addition which was made when Section 235 (a) reenacted and broadened the subpoena power formerly contained in Section 16 of the Immigration Act of 1917 (see the Government's brief in *Minker*, pp. 16–17).

a. Section 235 (a) is the *only* provision in the Act which applies to "investigations" as distinguished from the more formal proceedings elsewhere provided in the Act. Whether it is felt that a particular investigation may give rise to future deportation proceedings,* or to cancella-

* Investigations to determine whether grounds exist to warrant the institution of a formal deportation proceeding are controlled by 8 C. F. R. 242.11, which provides in part:

"*Investigations.*—(a) *Persons believed to be subject to deportation.* The case of every person believed to be

tion proceedings, or even to the institution of criminal charges,[4] the authority to issue a subpoena for preliminary investigative purposes derives from Section 235 (a). For these investigative activities concern matters "material and relevant to the enforcement of this Act" within

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subject to arrest and deportation shall be investigated by such officer as may be designated for that purpose.

(b) *Purpose of investigation.* The purpose of the investigation shall be to discover whether or not a prima facie case for deportation exists; that is, whether there is credible evidence reasonably establishing that the person investigated is an alien and that he is subject to deportation.

Section 235 (a), like the section from which it was derived in the Immigration Act of 1917 (Sec. 16, c. 29, 39 Stat. 885), has been held to authorize the use of a subpoena in connection with such preliminary investigations. *Vivian* v. *United States*, 224 F. 2d 53 (C. A. 7), pending on petition for a writ of certiorari, No. 322, this Term. See also *Azzollini* v. *Watkins*, 172 F. 2d 897, 899 (C. A. 2); *Graham* v. *United States*, 99 F. 2d 746, 748–749 (C. A. 9); *In re Estes*, 87 F. Supp. 461 (N. D. Texas), reversed on other grounds *sub nom. Estes* v. *Potter*, 183 F. 2d 865 (C. A. 5), certiorari denied, 340 U. S. 920; *Immigration Manual* (Govt. Printing Office, 1946), pp. 9073–78.

[4] See 8 C. F. R. 340.11, set forth at pp. 59–60, Brief for United States, *United States* v. *Minker*, No. 35.

[5] 8 C. F. R. 287.2 provides:

Criminal violations; investigation and action. Whenever a district director or an officer in charge has reason to believe that there has been a violation punishable under any criminal provision of the laws administered or enforced by the Service, he shall cause an investigation to be made immediately of all the pertinent facts and circumstances and shall take or cause to be taken such further action as the results of such investigation warrant.

the plain terms of Section 235 (a). And precisely such a matter is involved here. Since, as shown in the Government's *Minker* brief (pp. 21–29), investigations to determine whether denaturalization proceedings should be brought have long been a familiar function of the Immigration and Naturalization Service, the subpoena provisions of Section 235 (a) apply.

Moreover, the provisions petitioners cite, relating to administrative hearings, not only fail to support petitioners' denial of the subpoena power for *investigative* purposes, but actually show that Section 235 (a) is even the source of the subpoena power essential to *adjudicative* proceedings. Section 236 (a) sets out the procedure for formal hearings in exclusion cases. It contains no provision in itself for subpoenas, but specifically provides that the applicable provisions of Section 235 shall pertain. Thus, there is no such "reiteration" as petitioners suggest (Pet. Br. 36); instead, it is clear that the subpoena power for proceedings under Section 236 (a) derives solely from the general provisions of Section 235 (a).

Similarly, neither Section 242 (b), dealing with deportation proceedings, Section 287, describing the general powers of immigration officers and employees, nor Section 336 (d), providing for the Attorney General's participation in naturalization proceedings, contains any separate grant of the subpoena power. It is difficult to perceive,

therefore, where there is basis for arguing (Pet. Br. 36–37) that application of the general subpoena power under Section 235 (a) would render any of these other provisions "duplicitous" or "meaningless." To the contrary, Section 235 (a) grants power to issue subpoenas which would otherwise be lacking—serving, for example, to authorize such action in deportation investigations and in deportation hearings under Section 242 (b). See *United States* v. *Vivian*, 224 F. 2d 53 (C. A. 7), pending on petition for certiorari, No. 322, this Term. That Congress intended the subpoena power under Section 235 (a) to apply to formal administrative hearings as well as investigations seems clear from the fact that the power was granted generally to the "Attorney General and any immigration officer, including special inquiry officers"—as distinguished from Section 16 of the 1917 Act (39 Stat. 885, 8 U. S. C., 1946 ed., 152), which gave the power only to a "district director" or "inspector in charge", and referred merely to "investigations" as the occasions for exercising the power. This change is to be read with the provisions of the 1952 Act (1) defining a "special inquiry officer" as any immigration officer designated by the Attorney General, on the basis of special qualifications, "to conduct specified classes of proceedings" (Section 101 (b) (4)), and (2) forbidding any such officer to exercise this hearing and adjudicating function in any case where he has

participated in investigative or prosecuting functions (Sections 236 (a) and 242 (b)). Cf. *Marcello* v. *Bonds*, 349 U. S. 302, 305; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 41–47.

While it is thus apparent that Section 235 (a) authorizes subpoenas for adjudicative as well as investigative purposes, it bears emphasis that the discussion in this case need not reach even this point. The still more obvious proposition which answers petitioners' argument is simply that the provisions for hearing and investigation to which they refer, with the special and narrow exception discussed immediately below, make no separate grant of the subpoena power at all, and so present no problem of redundancy if the subpoena provision in Section 235 (a) is given the full effect its language and history require.[5]

b. The remaining provision petitioners cite, Section 335 (b), adds nothing to their argument. Section 335 (b) deals with preliminary examinations on petitions for naturalization, and does provide for subpoenas to be issued in such proceedings. However, this special provision is merely a substantial reenactment of Section

[5] As we have observed, Section 287 is one of the provisions petitioners invoke in this connection though, like the others already discussed, it contains no grant of the subpoena power. Section 287 (b) does reiterate the oath administering authority conferred in Section 235 (a), but adds a penalty for perjury which is not prescribed in the latter. As to subpoenas, on the other hand, Section 235 (a) makes the only provision and spells out the method of enforcement in the courts.

333 (a) of the Nationality Act of 1940 (54 Stat. 1137, 1156), as amended (8 U. S. C., 1946 ed., Supp. V, 733 (a)), whereas Section 235 (a) derives from Section 16 of the Immigration Act of 1917 (39 Stat. 874, 885, 8 U. S. C., 1946 ed., 152). The separate origins of the two sections and the traditionally unique character of the preliminary naturalization examination as an adjunct of the court proceeding to which it relates leave no realistic basis for arguing that Section 235 (a) must be truncated to avoid overlap with 335 (b).

The continuation in the 1952 Act—and in the regulations thereunder (*infra*, p. 21)—of a separate provision detailing the powers and duties of naturalization examiners reflects a traditional statutory arrangement under which such examiners have functioned as officers of the naturalization court rather than purely executive officers. See *Bindczyck* v. *Finucane*, 342 U. S. 76, 81, fn. 5. Indeed, when provision for this function was first made, these officers were appointed by a federal district judge for the district in which the naturalization proceeding was pending "to conduct preliminary hearings upon petitions for naturalition to such court, and to make findings and recommendations thereon." Act of June 8, 1926, c. 502, 44 Stat. 709. In language identical in material respects with that now appearing in Section 335 (b) of the 1952 Act, this original provision empowered the examiner "to subpoena witnesses, and to administer oaths, including the

oath of the petitioner to his petition and the oath of his witnesses." Although provision was made in 1940 for appointment of naturalization examiners by the Commissioner or a Deputy Commissioner, their function as officers of the court remained the same (*Nationality Manual* (Govt. Printing Office, 1944), p. 8061), and the same provision for subpoenas was reenacted. Nationality Act of 1940, Sec. 333 (a), 54 Stat. 1137, 1156. The statute remained in this form, without any change pertinent here, until the Immigration and Nationality Act of 1952 was enacted. In Section 335 (b), the 1952 Act simply carried forward these provisions for preliminary examination and for the issuance of subpoenas incident thereto. See H. Rep. No. 1365, 82d Cong., 2d Sess., pp. 279–281.

Section 235 (a) of the 1952 Act derives, on the other hand, from Section 16 of the Immigration Act of 1917. See H. Rep. No. 1365, 82d Cong., 2d Sess., pp. 164–166. Throughout the years when the separate provision for subpoenas by preliminary examiners was in force, Section 16 was also in force. And in the 1952 Act, Section 235 (a) became the broadened successor of former Section 16, while the separate provision for preliminary examiners was continued in Section 335 (b).

This brief sketch of the separate origins defeats the effort to show that Section 235 (a) could justifiably be emasculated to avoid any supposed

duplication in Section 335 (b). It may be that, had the provisions evolved differently, all references to subpoenas would have been bundled into 235 (a), eliminating the specific authorization for the specific purposes of 335 (b). Even this is doubtful, however, bearing in mind the special character of the preliminary naturalization examiner, whose role is like that of a special master in equity, and who receives testimony which may be and often is accepted by the court in lieu of another appearance by the witnesses. See *Bindczyck* v. *Finucane*, 342 U. S. 76, 81, fn. 5; 8 C. F. R. 335b.1 (d). It is to be noted, moreover, that the administrative regulations, like the statute, deal separately with the special subject of preliminary examinations, including the separate grant of the subpoena power for this purpose. See 8 C. F. R. 335.11 generally, and subsection (e), relating to subpoenas; also, 8 C. F. R. 287.4 (a), outlining the subpoena power generally, "[e]xcept as provided in § 335.11 * * *" (*infra*, pp. 22–24).

The significant point here, at any rate, is not whether Sections 235 (a) and 335 (b) could now be read as overlapping. All that matters for present purposes is that the separate evolution of these provisions fully explains their separate character, and answers the suggestion that the broad language of Section 235 (a) should be read out of the statute to avoid any suggestion of duplication with another provision having no relation to the investigative function here involved.

2. Contrary to the assertion (Pet. Br. 37) that the administrative regulations are silent on the subpoena power conferred by Section 235 (a), the matter is explicitly dealt with in 8 C. F. R. 287.4, which provides in pertinent part:

> *Subpena*—(a) *Who may issue.* Except as provided in § 335.11 of this chapter, subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued upon his own volition by a district director, officer in charge, or special inquiry officer in any proceeding pending before him, or upon application of an officer of the Service, or upon written application of the alien or other party affected:

While this provision is numbered under Section 287, which deals generally with the powers (other than the subpoena power) of immigration officers, Part 287 of the regulations specifically includes Section 235 of the Act in the "Authority" cited for its issuance. 8 C. F. R., p. 140; and see 8 C. F. R., 1954 Supp., 9.5a, dealing with the authority of regional commissioners and providing, in subsection (kk), that such commissioners shall have the powers of officers of the Service with respect to issuance of subpoenas "as provided in section 235 (a) of the Immigration and Nationality Act and Part 287 of this chapter."

It would have been clear, moreover, even without this explicit citation, that Section 235 (a) is the only statutory basis upon which the gen-

eral subpoena provisions in Part 287 of the regulations could have been predicated. It may be that the regulations are in this respect more symmetrical than the statute, bringing together the general provisions which define the powers of immigration officers. The point of importance here, however, is that petitioners have overlooked the provision in the regulations unmistakably asserting and prescribing the exercise of the subpoena power granted in Section 235 (a) of the Act. And the difference in numbering is, of course, without significance. It is noteworthy in this connection that the House Judiciary Committee included in its discussion of Section 235 the observation that "Section 287 * * * further specifies powers of immigration officers and employees of the Immigration and Naturalization Service". H. Rep. No. 1365, 82d Cong., 2d Sess., p. 55. But even apart from this confirmation of the propriety of reading and administering Sections 235 and 287 together, it would be "frivolous" here, as it was in *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326, 338, to argue that the regulation may be ignored "because it was not specifically incorporated under" the statutory section it implements—particularly where that section is expressly referred to in the regulation and is the only appropriate basis therefor.[6]

[6] To be sure, petitioners undertake no such argument. Instead, they wholly overlook 8 C. F. R. 287.4 and proceed on the apparent assumption that there is no regulation at all dealing with the subpoena power.

It is equally unimportant that, like the statute, the regulation makes no specific reference to denaturalization investigations, or to any other particular "matter which is material and relevant to the enforcement of this Act * * *." The subpoena power is in both instances defined generally and is available for all such matters. Further particularization, instead of helping, might only have served as occasion for arguments like petitioners'—that specific subjects not mentioned were not covered. Here, there is no proper basis for such a contention. It is enough that the broad language of both statute and regulation—especially when read against the legislative history and administrative background reviewed in our *Minker* brief (pp. 17–29)—plainly reach the important "matter" of possible fraud in the procurement of naturalization.

II

THE SUBPOENA POWER IS NECESSARY AND PROPER FOR PERFORMANCE BY THE ATTORNEY GENERAL AND THE IMMIGRATION AND NATURALIZATION SERVICE OF THE DUTY TO ASCERTAIN WHETHER GOOD CAUSE EXISTS FOR DENATURALIZATION PROCEEDINGS

In support of their argument for a restrictive interpretation of the broad language Congress added when it adopted Section 235 (a), petitioners suggest (Pet. Br. 2–3, 25, 35) that the use of subpoenas for investigative purposes usurps a judicial function by implementing an inquiry

which, if it discloses adverse evidence, may result in a future denaturalization proceeding. They argue in essence that since they procured their certificates of naturalization by judicial decree, and since Section 340 (a) of the Act prescribes a judicial proceeding for cancellation, no administrative investigation is warranted. All inquiry going to the issue of legality of naturalization, they contend, should be deferred until after a suit is filed when (Pet. Br. 35) "a pretrial examination in such suit can accomplish the very purpose [the Service] now seeks to accomplish."

This argument misconceives the relationship between administrative investigation and judicial proceedings, both generally and within the specific context of the Immigration and Nationality Act. There is no inconsistency between the power of a government agency to investigate possible violations of law committed to it for administration, and the power in the prosecuting arm of government to bring formal proceedings in court when the decision has been made that a violation probably exists. Cf. *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642–643; *Oklahoma Press Pub. Co.* v. *Walling*, 327 U. S. 186, 201; *Penfield Co. of Cal.* v. *S. E. C.*, 143 F. 2d 746, 751 (C. A. 9), certiorari denied, 323 U. S. 768; *Consolidated Mines* v. *S. E. C.*, 97 F. 2d 704, 707 (C. A. 9). An administrative agency in its sphere of responsibility and competence has a preliminary investigative function very much

like that of a grand jury in the field of general criminal law. Petitioners in fact apparently concede this point (Pet. Br. 38).[7] And as we develop in our brief in *Minker* (pp. 21–28), such a relationship has long existed between investigative functions of the Immigration Service and the litigating function of the United States Attorney's office.

Thus, there is no inconsistency between the administrative investigation to determine whether grounds might exist requiring institution of a cancellation proceeding and the provision in Section 340 (a) for the bringing of suit by the United States Attorney after investigation reveals such grounds. Obviously, a proceeding under Section 340 (a) does not emerge spontaneously, without full administrative investigation to sustain the high degree of proof necessary in such cases. It is usually the Service which executes a "good cause" affidavit as the final product of exhaustive investigative procedures. At least since the promulgation of the first statutory denaturalization provision in 1906, the Service has conducted the investigation now formalized by regulation (8 C. F. R. 340.11). Responsive to the continued and increasing concern of Congress

[7] They state (Pet. Br. 38):

> We do not doubt the undoubted power of the Congress to grant power to its officials to make preliminary investigations prior to the commencement of actions in Court. We do doubt Congress granted such power by the provision in question here.

with improperly obtained certificates of naturalization, investigative subpoenas under Section 235 (a) appropriately implement this familiar function.

Only a persistent misconception of the nature of administrative investigation can explain petitioners' statement that naturalization certificates "should not be annulled by administrative action where a judicial proceeding is set up to accomplish such purpose" (Pet. Br. 35). The short answer is that investigation by the Service "is to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so". *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 201. There is no suggestion that the investigation can serve the purpose of or replace the judicial revocation proceeding under Section 340 (a)—except only to the extent that investigation frequently establishes the lack of ground for any such proceeding. See the Government's Brief in *Minker* (pp. 33–34).[8]

Similarly without foundation is petitioners' broad contention that enforcement of the subpoenas in this case would violate their right of

[8] A similar misconception underlies the argument of respondent in *United States* v. *Minker*, No. 35 (Brief for Respondent, pp. 17 *et seq.*) urging that the use of administrative subpoenas for investigative purposes offends against the constitutional separation of powers.

privacy (Pet. Br. 32–35). There can be no doubt as to the authority of Congress to empower the federal courts to summon persons before them for the purpose of an equity suit challenging the validity of certificates of naturalization. Cf. *Bindczyck* v. *Finucane*, 342 U. S. 76, 81–82; *Baumgartner* v. *United States*, 322 U. S. 665; *Mackenzie* v. *Hare*, 239 U. S. 299, 311–312; *Johannessen* v. *United States*, 225 U. S. 227. And petitioners concede (Pet. Br. 35) the propriety of pretrial examinations for purposes of such proceedings. Cf. *United States* v. *Costello*, 222 F. 2d 656 (C. A. 2), pending on petition for certiorari, No. 155, this Term. This plainly justified concession reveals the unsubstantiality of their argument. The only means available for compelling obedience to subpoenas under Section 235 (a) is a judicial order. There is no constitutional difference, and petitioners suggest none, between a judicial order for pretrial examination and a judicial order enforcing an administrative subpoena.

This simple conclusion entails no disregard of the fact, stressed by petitioners (Pet. Br. 33–34), that the individual's right of privacy enjoys protections unavailable to corporations. The dispositive point remains that petitioners have no blanket freedom from legitimate government inquiry—whether it concerns possible violations of the revenue laws (cf. *United States* v. *Murdock*, 284 U. S. 141), possible frauds on the nationality

laws, or any of the other subjects of potential civil or criminal action covered by the extensive powers of administrative subpoena discussed in our *Minker* brief (pp. 35–37, 40–43).

We do not, of course, imply that petitioners would be deprived of opportunity to make any valid claim of constitutional right or special privilege as to questions they may be asked on inquiry. No claim of Fifth Amendment privilege has been raised as yet and therefore no such issue is now before the Court. *United States* v. *Murdock*, 284 U. S. 141, 148; *Brown* v. *United States*, 276 U. S. 134, 144; *United States ex rel. Vajtauer* v. *Comm'r of Immigration*, 273 U. S. 103, 113; *Carroll* v. *Savoretti*, 220 F. 2d 900 (C. A. 5); *Schoeps* v. *Carmichael*, 177 F. 2d 391, 398–399 (C. A. 9), certiorari denied, 339 U. S. 914. Other questions of constitutional right which might be presented during inquiry are more properly deferred until the necessity for their decision arises. *United States* v. *Petrillo*, 332 U. S. 1, 5. What is decisive for present purposes is that the Service had both legislative and constitutional authority to issue the subpoenas now under attack.

Similar considerations dispose of the remaining suggestion (Pet. Br. 39) that the construction given Section 235 (a) by the court below would allow indiscriminate questioning and harassment of naturalized citizens by the Service and should for this reason be rejected. These generalized forebodings have no foundation in fact.

The type of investigation involved in the instant case is, as we have indicated, confined in its scope to the precise issues outlined by regulation. A district director must be satisfied, furthermore, that there is a prima facie showing that grounds for revocation exist before such investigation may even be undertaken. 8 C. F. R. 340.11.[9] Any witness subpoenaed under Section 235 (a) must be informed of the subject matter of the investigation in a far more precise manner than in many other kinds of administrative inquiries. In addition, he is afforded full opportunity, as the procedures in this case attest, to obtain judicial review of the jurisdiction of the Service to conduct its inquiry.

The fact that the Service officers might transgress their power or fail to accord witnesses procedural due process in a particular case is therefore no more cogent an argument for refusing to enforce Section 235 (a) than it would be for refusal to enforce any other subpoena provision. The federal courts are given enforcement authority and can meet such contentions on a case-by-case basis. The critical problem in this case is not the remedy for some possible future abuse, but the basic power to obtain information. The only issue here is whether the Service may issue subpoenas in the course of an investigation to

[9] Other regulations providing for investigations under the Act define the jurisdictional limits of inquiry with similar precision and specificity. *E. g.*, 8 C. F. R. 242.11 and 287.2.

determine whether good cause exists for instituting proceedings for cancellation of a certificate of naturalization. We submit that such authority is given by the statutory grant of power to subpoena for investigation of matters relevant to the enforcement of the Act and the administration of the Service.

CONCLUSION

It is respectfully submitted that the judgments of the Court of Appeals should be affirmed.

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